

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACOB ORTELL KINGSTON, ISAIAH
ELDEN KINGSTON and LEV ASLAN
DERMAN,

Defendants.

Case No. 2:18-CR-365

BEFORE THE HONORABLE BROOKE WELLS

DATE: AUGUST 29, 2018

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

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A P P E A R A N C E S

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TAX DIVISION
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1 AUGUST 29, 2018

SALT LAKE CITY, UTAH

2 P R O C E E D I N G S

3 * * *

4 THE COURT: Counsel, ready? All right. Calling

11:40:57 5 now the United States of America vs. Jacob Ortell

6 Kingston, Isaiah Elden Kingston and Lev Aslan Derman. The

7 United States is represented by -- and, counsel, if you'll

8 please state your appearances.

9 MS. GOEMAAT: Leslie Goemaat from the Department

11:41:19 10 of Justice on behalf of the United States, here with

11 Arthur Ewencyk and Richard Rolwing also of the Department

12 of Justice.

13 THE COURT: I note that Mr. Jacob Kingston is

14 here.

11:41:34 15 Mr. Williams, are you -- have you made an

16 appearance in this matter?

17 MR. WILLIAMS: Yes, Your Honor. I made an

18 appearance on Friday, and I'm here to inform Your Honor

19 that I am retained -- and my appearance will remain.

11:41:49 20 THE COURT: All right. And that issue is

21 resolved. Mr. Isaiah Kingston is also present.

22 Ms. Isaacson, are you making --

23 MR. WILLIAMS: Oh, I'm sorry. I thought you had

24 called Isaiah Kingston when you referred to me, since

11:42:06 25 that's who I was related to and appeared on, on behalf of

1 on Friday. If you said Jacob Kingston then I misheard
2 you.

3 THE COURT: I did. So, with regard to Jacob
4 Kingston, who is present?

11:42:18 5 MS. ISAACSON: Your Honor, Tara Isaacson
6 appearing on an interim basis for Mr. Kingston.
7 Previously Mr. Gregerson was temporarily appointed. What
8 we expect, Your Honor, the family is in the process of
9 retaining private counsel. We expect to be local counsel.
11:42:36 10 He's going to be retaining John Brownly and Matheson Beta,
11 who are Washington, D.C. Lawyers. We expect that the
12 formal appearances by local counsel, Mr. Bugden and
13 myself, as well as the counsel from DC, will be made by
14 Friday. And so, at that time, once we enter our formal
11:42:53 15 appearance, I'm sure Mr. Gregerson will want to formally
16 withdraw from the case.

17 But our request today, Judge, I have spoken with
18 opposing counsel and with the attorneys in D.C., and our
19 request with respect to Jacob Kingston would be to
11:43:08 20 continue the detention hearing today until next Wednesday,
21 which is the 5th, where all the retained counsel can be
22 present, the lawyers from D.C. can be present and we can
23 address the issue of detention with respect to Mr. Jacob
24 Kingston.

11:43:25 25 THE COURT: All right. And so now, as to Isaiah

1 Kingston, you're making that appearance, Mr. Williams?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: All right. And so, Mr. Gregerson, I
4 appreciate your participation thus far, but I think, under
11:43:45 5 the circumstances, you will not have any further
6 responsibility. Please submit your request for payment
7 under the CJA for these two appearances.

8 MR. GREGERSON: Thank you, Your Honor.

9 THE COURT: All right. So the question of
11:44:09 10 representation seems to be resolved, and, Ms. Isaacson,
11 your appointment -- are you entering an appearance now as
12 local counsel?

13 MS. ISAACSON: Not formally yet, Judge. We think
14 we will have that resolved by Friday.

11:44:30 15 THE COURT: You will need to have it resolved by
16 Friday.

17 MS. ISAACSON: We will, Judge.

18 THE COURT: He is either to submit his financial
19 affidavit or to have counsel retained no later than Friday
11:44:43 20 at noon.

21 MS. ISAACSON: Understood.

22 THE COURT: All right? And an appearance needs
23 to be entered. All right. So that resolves that issue.
24 This is the time that was also scheduled for consideration
11:44:59 25 of a detention hearing. You've asked for a continuance of

1 that. I see today just a few minutes earlier, a document
2 entitled Memorandum in Opposition to Detention Hearing and
3 Request for Immediate Relief that was filed by
4 Mr. Williams.

11:45:21 5 Mr. Williams, I note on the front of this, and
6 I'll let you argue, which I'm sure you will, that this
7 does not deserve a detention hearing. However, that
8 statute does allow me to, sui sponte, make a
9 determination, should I determine that there is either a
11:45:42 10 risk of danger or a risk of non-appearance. Go ahead and
11 argue, but I think that's a losing one.

12 MS. ISAACSON: Your Honor, would you mind
13 addressing the issue of Jacob Kingston and maybe we can
14 set a date on -- for the further detention hearing and we
11:46:01 15 could end that portion of the hearing and let Mr. Williams
16 address Isaiah.

17 THE COURT: That's fine. All right.

18 MS. ISAACSON: Does the Court have time?

19 THE COURT: But I anticipate them -- the hearing
11:46:15 20 being the same for both, all right?

21 MR. WILLIAMS: We will be objecting to that.

22 THE COURT: I know. So that's why I'm saying,
23 Ms. Isaacson, let's wait a minute and let me hear from
24 Mr. Williams.

11:46:31 25 MS. ISAACSON: Understood.

1 MR. WILLIAMS: I guess I'm not unused to
2 having -- being told before argument that I'm going to
3 lose, but I believe that the motion that we filed today is
4 brought with merit. And I think that, at least in this
11:46:51 5 district, especially, and especially based on recent
6 holdings by other Courts, including Judge Nuffer and
7 Magistrate Judge Furse's recent memorandum decision, which
8 I have attached to the pleading today, that, at least in
9 this district, the position is that a preliminary
11:47:13 10 threshold finding is required under the relevant statutory
11 law in order to determine whether immediate release is
12 appropriate or a detention hearing is warranted.

13 And I submit to Your Honor that that threshold
14 finding -- if the detention hearing is going to be set
11:47:33 15 based on a sui sponte order of this Court, as you
16 referenced, rather than the present motion by the
17 government, I don't think that changes the standard from
18 the very well-written and reasoned, it seems to me,
19 opinion of Judge Furse one month ago.

11:47:53 20 The position is, according to law applying the
21 relevant statutory provisions that we're dealing with,
22 that there's a threshold determination that ought to be
23 met because of all of the presumptions of release that
24 apply. The considerations are justice, that this case, by
11:48:12 25 charge, by nature and by factual basis doesn't qualify for

1 detention in any of the basic iterated portions of the
2 detention statute. It doesn't.

3 We can tick down through those, which is
4 preliminary because I'm not going about a threshold
11:48:34 5 hearing, and I will say that even Judge Furse acknowledges
6 it's not clear what the quantum of evidence that's
7 necessary to make the threshold finding is, but it ought
8 to be undertaken, and in that -- in her ruling, she did.
9 Of course she found a threshold. That was a rather
11:48:52 10 remarkable case where she ultimately released the
11 defendant, who was a convicted bank robber on new robbery
12 charges and hadn't appeared at his last Court hearing.

13 But I don't see any distinction. If a threshold
14 finding is required, I don't see any distinction between
11:49:11 15 the requirement that this Court articulate the basis for
16 it. I don't see any distinction between a sui sponte
17 ruling that a detention hearing ought to be had or the
18 government's motion -- based on the government's motion.
19 So we believe that Your Honor ought to have to articulate
11:49:33 20 findings of facts, and we would like to be able to respond
21 to those.

22 By the way, I think that the starting position as
23 well, and a critical one in this particular case for
24 Isaiah Kingston, is that -- and I have referenced relevant
11:49:51 25 law. And frankly, in that law, it indicates that it would

1 even be a violation of Rule 46 not to consider each
2 defendant entirely separately on the merits of detention
3 considerations.

4 The government's -- I don't know what this Court
11:50:06 5 would find -- make a threshold finding on. I can only
6 presume it would be something in the government's motion.

7 THE COURT: Well, and I have reviewed the
8 government's motion.

9 MR. WILLIAMS: And our position is, anything that
11:50:19 10 is proffered in that, that would support a detention
11 argument, is wrong or false and that the document is --
12 clearly argues that Isaiah Kingston ought to be detained
13 in relation to a whole variety of acts of other people,
14 including his two co-defendants. It is remarkable in the
11:50:49 15 nature of the proffer. There is one sentence in the
16 government's memo that is astonishing to me in terms of
17 the proposition that the government would think any Court
18 of Law would give it weight.

19 And that is a reference -- and this is
11:51:12 20 characteristic of the entire proffer of the government,
21 especially as it applies to Isaiah Kingston: Another
22 witness told investigators that an employee of WRE heard
23 from Jacob Kingston's brother-in-law -- three hearsay
24 levels -- that -- and then it doesn't have quotes or
11:51:30 25 anything else -- that Jacob Kingston and Isaiah Kingston

1 had just returned from a two-week trip to Turkey where
2 they purchased a home and that Jacob Kingston and Isaiah
3 Kingston intended to flee to Turkey.

4 I mean, that triple hearsay proffer out of
11:51:47 5 context, with no date associated with it or anything, I
6 mean, if a party to a lawsuit really has the audacity to
7 suggest that a Court could consider that, I submit to Your
8 Honor, you should hold that you're not. I mean, that's
9 outrageous. Imagine a proffer being made about your or my
11:52:07 10 conduct on that sort of basis. I mean, it's outrageous.
11 And that is the tenor and nature -- and I can go
12 line-by-line through the government's memorandum and
13 proffer in that regard.

14 And proffers are just that. They are acceptable,
11:52:24 15 but they are acceptable to be given whatever weight they
16 merit. And a proffer of a triple hearsay statement out of
17 context, without a date, in relation to a case where the
18 criminal conduct alleged is over two years prior, and the
19 two years since the raid of relevant entities, which there
11:52:43 20 were five in 2016, by the way, five entities raided.
21 Mr. Isaiah Kingston's house was not one of them. And the
22 fact that the last two years of Mr. Isaiah Kingston's
23 life, vis-a-vis the raid and the Grand Jury investigation
24 that followed it, has been to comply with and help to
11:53:07 25 fulfill the Grand Jury discovery requirements and order

1 for the Grand Jury. That's been his life two years.

2 The omission of things like that in this document
3 as they apply to Isaiah Kingston is very concerning in
4 terms of candor to the Court. So I think that -- and that
11:53:22 5 applies to the raid itself, where the government talks
6 about a raid two years ago that didn't warrant,
7 apparently, any charges against Mr. Kingston in the last
8 two years, and fails to tell the government and the
9 public, since it's not a sealed document and it's received
11:53:41 10 lots of attention in recent press articles of course, that
11 the raid was successful in obtaining apparently over two
12 terabytes of documents and information that the Grand Jury
13 process has been engaged with and Mr. Isaiah Kingston has
14 been cooperating through a lawyer in responding to.

11:54:02 15 I can go on and on about every single proffer, so
16 in this particular instance -- and let's keep in mind, by
17 the way, he is charged with two counts, 13 and 15, money
18 laundering, from 2013. That, in terms of weight of
19 evidence and nature of the case circumstances that Your
11:54:22 20 Honor will eventually deal with if we have a detention
21 hearing, it seems to me is relevant to the question about
22 whether we should.

23 I would like to let Your Honor know again,
24 relative to the question of whether we should have a
11:54:33 25 detention hearing, that there are a great deal of hardship

1 issues involved. Mr. Isaiah Kingston suffers a cancer
2 diagnosis, and he suffers from severe ulcerative colitis.
3 Incarceration is especially impactful to him, and, as of
4 today, we learned that our efforts to get his medication
11:54:53 5 that he has been referred to taking by a doctor, with a
6 letter from that doctor that we had provided to the
7 marshal and the jail that he is in right now, have
8 responded to us today that they will not. Of course they
9 maintain that they will assess him with their own medical
11:55:13 10 considerations.

11 But further, his wife is pregnant and due any
12 time. Her official due date is in about three weeks, I
13 think. She's historically early, and the signs are that
14 she would be early. It would be an incredible hardship to
11:55:31 15 have something like the birth of a child occur under these
16 circumstances and the nature of this proffer to detain
17 Mr. Isaiah Kingston without consideration of specific
18 threshold factors.

19 Now, I didn't know whether the Court, on the
11:55:45 20 question of threshold, would be open to a complete counter
21 proffer to every single thing in this memorandum as it
22 applies to Isaiah Thompson. For instance, he does not
23 have any access to a private jet and has been on one once
24 that had nothing to do with this case. That omission
11:56:11 25 seems to me to be material and important.

1 THE COURT: You seem to be arguing your detention
2 argument now.

3 MR. WILLIAMS: Given that the -- according to the
4 well-reasoned opinion of Magistrate Furse on this very
11:56:25 5 subject last month, it suggests that it's not clear what
6 the quantum is and what the appropriate factors would be,
7 and I think there are appropriate factors.

8 THE COURT: With all due respect to Magistrate
9 Furse, I'm not bound by her findings.

11:56:40 10 MR. WILLIAMS: You are not, but it's a local
11 district memorandum that cites to law that is binding, or
12 at least is strongly -- something this Court should
13 strongly consider from other circuits.

14 THE COURT: I'm happy to consider it, but I do
11:56:56 15 have -- and I want to hear from the government -- but I
16 can call for this in a sui sponte manner based upon the
17 information I have, so I will do so.

18 MR. WILLIAMS: I understand. I would like to ask
19 the Court -- it's our request that the Court articulate
11:57:16 20 the factual bases that the Court believes meets the
21 threshold requirement to set this for a detention hearing
22 and then allow a counter proffer by the defense in
23 relation to whatever specific, as you say, things before
24 you Your Honor would be utilizing because I think that we
11:57:33 25 are entitled to that in terms of -- frankly in terms of

1 notice. We don't know what Your Honor thinks about or
2 has -- I mean, all we know that you have before you is a
3 pretrial report.

4 THE COURT: That's what I have.

11:57:47 5 MR. WILLIAMS: And the memorandum.

6 THE COURT: And the memorandum.

7 MR. WILLIAMS: And the whole world has seen the
8 memorandum and its contents. And our position is and our
9 general counter proffer is, it's false as it applies to
11:58:00 10 Isaiah Kingston, misleading and terribly concerning in
11 terms of its material omissions on the subjects that it
12 brings up. And therefore we believe, under these
13 particular circumstances, Mr. Isaiah Kingston has a right
14 to know what it is that this Court would in fact rely upon
11:58:19 15 to make the threshold finding and then be allowed an
16 opportunity at least here on our feet, since we don't know
17 yet, to offer counter proffers to that information.

18 THE COURT: Thank you.

19 MS. GOEMAAT: Good afternoon, Your Honor. Based
11:58:42 20 upon the statute, upon motion of the attorney of the
21 government or the judicial officer's own motion in a case
22 involving a serious risk that such person will flee or a
23 serious risk that such person will obstruct or attempt to
24 obstruct justice, threaten, injure, intimidate or attempt
11:58:57 25 to do the same to a prospective witness or juror, a

1 hearing shall be held.

2 The United States submits that through its
3 proffer and submitted evidence in the motion for
4 detention, the government has met the threshold burden to
11:59:13 5 show that Mr. Isaiah Kingston poses both a serious risk
6 that he will flee, as well as a serious risk that he will
7 obstruct or attempt to obstruct justice for the following
8 reasons:

9 First. Mr. Isaiah Kingston is a 50 percent owner
11:59:28 10 and the chief financial owner of Washakie Renewable
11 Energy. As demonstrated in Exhibit B to the United
12 States' motion, from 2013 through 2015, Washakie Renewable
13 Energy wired in excess of at least \$134,000,000 to various
14 bank accounts in the country of Turkey.

11:59:51 15 As demonstrated by Exhibit C to the United
16 States' motion for detention, it appears that Washakie
17 Renewable Energy in concert with co-defendant Levon
18 Termendzhyan's company Noil Energy and a third company SBK
19 Holding, LLC, also involved in a charged money laundering
12:00:15 20 count, have invested upwards of \$450,000,000 in Turkey,
21 according to the press release, with an intention to
22 invest an additional \$950,000,000.

23 Now, the timing of this press release and the
24 timing of the additional \$500,000,000 anticipated to be
12:00:36 25 invested in Turkey coincide with the last two false and

1 fradulent Forms 8849 filed by the defendants' two
2 companies, Washakie Renewable Energy and United Fuel
3 Supply, which requested in excess of \$600,000,000 in
4 refundable tax credits for tax year 2015. Those tax
12:00:58 5 refunds were not paid. That's detailed in Government's
6 Exhibit A..

7 So, first and foremost, the United States submits
8 that defendant Isaiah Kingston has an absolute 50 percent
9 equal right to the \$134,000,000 that has been wired to the
12:01:16 10 country of Turkey. As Your Honor is likely aware, as it
11 has been announced in the press in its calendar year,
12 President Erdogan has announced he will not be extraditing
13 U.S. persons from Turkey until the United States
14 extradites the Pennsylvania cleric Fethulla Gulen.

12:01:39 15 Secondly, the United States has interviewed a
16 witness who has stated, as Mr. Williams rightly noted,
17 that he heard from an employee of Washakie, through Jacob
18 Kingston's brother-in-law, that both Isaiah Kingston and
19 Jacob Kingston purchased a residence in Turkey and
12:01:53 20 intended to flee there should they face prosecution.

21 Now, we submit that all defendants in this case
22 have access to means to flee to Turkey, as money has been
23 invested in SPK Holdings AS, which is the Turkey SPK
24 Holdings. Washakie Money, a company equally owned by
12:02:16 25 defendants Jacob Kingston and Isaiah Kingston were

1 invested in SPK Holdings AS, which then purchased a
2 private airline called Borajet. Mr. Kingston's
3 co-defendant, Levon Termendzhyan, used a Borajet airplane
4 to flee California in August of 2017, when unrelated state
12:02:39 5 search warrants were being executed.

6 We submit that that is sufficient evidence to
7 show that these three defendants, through their companies
8 through which they have entered commingled funds, have
9 access to an airline which they could use to flee the
12:02:57 10 country.

11 Mr. Isaiah Kingston also has significant motive
12 to flee the country. Here he is charged in two counts of
13 money laundering, and I need to correct this statement
14 from the initial appearance. The statutory maximum for
12:03:11 15 Counts X through XIV, concealment money laundering, is 20
16 years. Therefore, on this first Indictment, Mr. Isaiah
17 Kingston faces a maximum sentence of 30 years. Mr. Jacob
18 Kingston faces a maximum sentence of 137 years. The
19 guidelines calculate the relevant conduct, and the
12:03:32 20 guidelines range for money laundering, based upon the
21 specified unlawful activity that is the source of the
22 funds if the defendant could be found guilty. In this
23 case, all three defendants are charged or are alleged to
24 have participated with each other and others in a mail
12:03:52 25 fraud scheme that netted \$511,000,000 from the United

1 States Treasury in fraudulently obtained refunds.

2 The United States would proffer that the intended
3 loss from this mail fraud scheme was in excess of \$1.1
4 billion. Therefore we submit that, should he be convicted
12:04:16 5 on these charges alone, Mr. Isaiah Kingston will face a
6 guidelines range of life in prison, although the statutory
7 max on these charges are 30 years.

8 We'll also submit to Your Honor that the United
9 States intends to present to the Grand Jury additional
12:04:31 10 charges for their consideration regarding both Mr. Jacob
11 and Isaiah Kingston. Therefore we submit that we have met
12 and exceeded the threshold requirement to show that this
13 defendant, Mr. Isaiah Kingston, poses a serious risk of
14 flight.

12:04:49 15 In addition, we submit we have shown that this
16 defendant poses a serious risk of obstruction. The United
17 States submitted text messages to Your Honor, Exhibits C
18 and D to the motion. These text messages were retrieved
19 from a cell phone that was seized from a third party. The
12:05:11 20 text messages show clearly that Mr. Jacob Kingston is
21 attempting to bribe government officials and to pay
22 enforcers to visit prospective witnesses. As it pertains
23 to Mr. Isaiah Kingston, the text messages make it clear
24 that Mr. Jacob Kingston is sending Isaiah Kingston with
12:05:32 25 the money to pay the bribes to the intermediary.

1 The investigation ultimately uncovered that the
2 intermediary kept this money, did not pay those bribes,
3 but the United States submits that, based on the face of
4 the text messages alone, it is clear that Mr. Jacob
12:05:53 5 Kingston believed he was successfully paying bribes and
6 paying enforcers.

7 Many witnesses in this case, enumerable witnesses
8 have expressed fear of reprisal for cooperating with the
9 United States. Just this morning the United States
12:06:09 10 received a message from an attorney who represents a CI in
11 this case, stating his client had received numerous death
12 threats and he was moving his client into a safe house.
13 There are very real safety concerns for witnesses in this
14 case, and the intent and action taken to pay bribes both
12:06:33 15 to enforcers who would hurt and intimidate witnesses and
16 law enforcement officials is clear on the face of Exhibit
17 C and D submitted by the United States attached to the
18 motion.

19 This is particularly concerning because, as the
12:06:46 20 United States' motion states, the nine executed search
21 warrants on February, 10, 2016 were leaked in some regard.
22 In some way, the persons associated with these various
23 locations learned of the impending search warrants.
24 Records were destroyed. In responds to Mr. Williams'
12:07:07 25 assertion that Mr. Isaiah Kingston has been attempting to

1 comply with the subpoena in this matter, that is a subject
2 of sealed litigation, and it's probably not appropriate
3 for an open courtroom, but we'd be happy to address that
4 matter if we seal the courtroom.

12:07:25 5 Your Honor, the United States submits that we
6 have far exceeded the threshold requirement to show that
7 Mr. Isaiah Kingston poses a very serious risk of flight
8 based on his access to \$134,000,000 in Turkey, his access
9 to a private airline and his incentive and motive to flee
12:07:44 10 based on the potential guideline sentence in this case.

11 We also submit we have shown there is a serious risk he
12 will obstruct or attempt to obstruct justice based on the
13 demonstrated attempts to pay enforcers to harm or
14 intimidate prospective witnesses as well as the message
12:08:03 15 received this morning by an attorney who has moved a
16 witness to a safe house as well as the numerous
17 expressions of concern from witnesses in this case.

18 We would ask Your Honor to hold a detention
19 hearing, and we will at that time argue for the detention
12:08:13 20 of Mr. Isaiah Kingston.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: Judge, as to the sort of where we
23 ended there, we heard a lot of allegations about money
24 going to Turkey. There is no -- not even a proffer of
12:08:28 25 what basis the government has to believe that Isaiah

1 Kingston would have access to any of it.

2 THE COURT: She stated that he's a 50 percent
3 owner.

4 MR. WILLIAMS: It might be worthwhile to know
12:08:41 5 that a Court in New York recently found that
6 representations that Washakie has holdings in Turkey were
7 false, that they don't have any holdings in Turkey. But a
8 50 percent owner on paper of a company is not, I would
9 submit, any evidence that that person has access to what
12:08:58 10 someone else in that company might have done in the way of
11 putting money in Turkey. How is that a connection? The
12 50 percent ownership right now in Washakie is worth
13 nothing. Washakie was without the ability to conduct
14 business after the 2016 raids. It's insolvent.

12:09:19 15 In the United States of America, Mr. Isaiah
16 Kingston has access to no Washakie money. He works on a
17 salary basis for USF. He was raided two years ago with
18 all of these things in the air and has done nothing to
19 show any intent to flee. Whether or not his brother
12:09:37 20 referenced him in some text chain is unfortunate but
21 doesn't prove that he did anything, let alone knowingly.

22 And there's just no proof that I have heard from
23 the government of access to any money by Isaiah Kingston.

24 THE COURT: Well, it's for them to prove, to
12:09:55 25 show. But they are making proffers, just as you are

1 making proffers, and if I'm going to accept your version
2 of things, I likewise can consider theirs.

3 MR. WILLIAMS: Except they have the burden. Mine
4 is to counter.

12:10:17 5 THE COURT: I understand. I understand that.

6 MR. WILLIAMS: And I'm saying the burden is not
7 met by just saying sometime, years ago -- now I guess at
8 least two, as is shown by the exhibit in the charging
9 document in this case -- the last acts related to criminal
12:10:33 10 activity brought in this Indictment were in 2016, the same
11 month of the raid. I submit, while we're on the subject,
12 that the proffer about obstruction and any kind of witness
13 tampering issues or anything like that, they have had two
14 years to charge any activity or to seek -- I mean, if they
12:10:55 15 are really, really, after being put on notice two years
16 ago of legitimate issues that the government thinks apply
17 to threats to human beings, they are standing here telling
18 this Court they have done nothing about it until now, when
19 they want to take a threat away in a case that has to do
12:11:15 20 with a 2013 money laundering charge? I am a concerned
21 citizen.

22 So, I mean, the counter proffer is the government
23 has just asserted that 50/50 ownership in Washakie
24 presently means anything. And that's just a bare
12:11:28 25 assertion, and it's common sense that that could still

1 mean nothing in terms of the organization of who has
2 rights to what in money, or what has to do with, you know,
3 who can do anything to get money from a foreign country.

4 THE COURT: It's a factor for consideration.

12:11:48 5 MR. WILLIAMS: I don't -- I agree that it's a
6 relevant factor. My position here is not that these are
7 not relevant factors but that their proffers that are
8 based in such weak -- a proffer is a proffer of evidence,
9 right? And the Court's rule is to accept the evidence
12:12:03 10 that's proffered and the weight that should be given it.
11 These proffers are triple hearsay claims. We still don't
12 know a date when this statement was supposedly made. What
13 if it was made seven years ago?

14 THE COURT: Mr. Williams, I will do that, but
12:12:20 15 it's my ruling that they have met the threshold and that
16 I, based upon that proffer, have the statutory right to
17 hold a hearing if I think there is sufficient proffer to
18 believe that either or both of them constitute risk of
19 danger or risk of non-appearance. And so, I'm going to
12:12:47 20 deny your request. We're going to set the matters for
21 detention hearings, and we can set them for whatever
22 length of time that you think appropriate, within the
23 Court's schedule. All right? And you can have them
24 separately or you can have them together. But it makes
12:13:08 25 much more sense to me to have them held together because

1 we're not duplicating information and evidence that may
2 apply to both.

3 MR. WILLIAMS: And in response to that, Your
4 Honor, I accept that Your Honor has made the ruling that,
12:13:26 5 based on the government's proffer, a threshold finding can
6 be made that warrants a detention hearing on either sui
7 sponte order of this Court and/or the government's motion
8 for detention; is that correct?

9 THE COURT: Correct.

12:13:49 10 MR. WILLIAMS: We feel, under the circumstances
11 as I've articulated them as best I can today -- we haven't
12 filed a full memorandum in relation to the detention
13 issues because we are new to the case and that's a large
14 job in this case.

12:14:06 15 THE COURT: I know that.

16 MR. WILLIAMS: But we do believe the
17 constitutional principles and rules iterated in the law
18 that I have supplied in the brief memorandum today having
19 to do to with the need to take specific and individualized
12:14:20 20 consideration of independent defendants on an independent
21 basis, feel that we should have a hearing that is a
22 hearing only for Isaiah Kingston. As I have already said,
23 we believe the government's argument is much more of an
24 argument that he's his brother and a half owner, so we
12:14:42 25 should attribute everything that Jacob Kingston did.

1 I'm not saying Your Honor can't reasonably ferret
2 that out, but I just do think in this particular case,
3 based upon the government's pleading, it is an actual
4 tactic and strategy and it's best guarded against by
12:14:59 5 having a specific and individualized.

6 And I don't think they overlap. I mean, how does
7 it overlap necessarily with Mr. Isaiah Kingston if the
8 government can prove that Jacob Kingston did something? I
9 mean, they need to have the connection, and they don't
12:15:16 10 even proffer a connection here. They just use the
11 conjunction "and" conveniently, control enter.

12 THE COURT: Thank you.

13 Do you have any response to that?

14 MS. GOEMAAT: Your Honor, the United States is
12:15:28 15 prepared to make a proffer and address arguments
16 individually as to Jacob Kingston and Isaiah Kingston,
17 whether it is at a hearing held consecutively or on
18 different days. We would suggest that having both
19 hearings on the same day would be more efficient, as there
12:15:44 20 is some amount of evidence that goes to both defendant
21 Jacob Kingston and Isaiah Kingston's risk of flight;
22 namely, that their jointly owned company has invested a
23 huge amount of the fraudulent proceeds that they are
24 alleged to have obtained together in a scheme in Turkey.

12:16:00 25 However, should we have the hearing on the same

1 day, we are prepared to address each defendant
2 individually.

3 THE COURT: Do we have a full day coming? Can we
4 move things around?

12:16:32 5 MS. ISAACSON: Your Honor, if you might consider
6 next Wednesday the 5th, I think that was a date that the
7 government could make happen. It sounds like -- are
8 we setting them on the same day, then? I don't know.

9 THE COURT: Yes.

12:16:46 10 MR. WILLIAMS: The Court understands my request,
11 right?

12 THE COURT: I do.

13 MS. ISAACSON: So all the parties from the
14 defense?

12:16:53 15 THE COURT: We will set them next Wednesday.

16 Ms. Peart, what times?

17 MS. GOEMAAT: Your Honor, we would ask you to
18 consider, based upon the government counsels'
19 availability, we had conferenced with Ms. Isaacson, and I
12:17:08 20 thought we had agreed upon the 10th as a potential day for
21 the detention hearing. We would request --

22 THE COURT: I will not be in town.

23 MS. ISAACSON: So the options for us -- we have a
24 full day -- the defense team would have a full day on the
12:17:22 25 5th, on Tuesday the 11th --

1 THE COURT: I'm out of town that entire week.

2 MS. ISAACSON: If we could make it happen on the
3 5th, that would be our request.

4 THE COURT: All right.

12:17:35 5 MR. WILLIAMS: Your Honor, it's our request that
6 the detention hearing for Isaiah Kingston be scheduled for
7 this Friday, the day after tomorrow. I also believe that
8 the reading of the statute requires that that occur. He
9 has had continuity of counsel since his initial appearance
12:17:53 10 on last Friday. The statute contemplates having a
11 detention hearing on the date of the initial appearance.
12 The exceptions for that are a motion to continue by the
13 government, and that motion, if it's granted, can be
14 granted for only three days. A motion to continue by the
12:18:11 15 defendant, if granted, can be granted only for five days.
16 The fifth day, by our calculation, is this coming Friday,
17 and we're asking for the hearing then.

18 THE COURT: I don't know that we can accommodate
19 that. Okay. We can. 2:00 o'clock on Friday for
12:18:34 20 Mr. Isaiah Kingston.

21 MS. GOEMAAT: Your Honor, two points. First, it
22 appears in the statute that the five- and three-day
23 limitations are except for a good cause. We would submit
24 that it is good cause shown that a significant amount of
12:18:46 25 the evidence to be proffered will be duplicative and,

1 secondly, to allow government counsel to return to D.C. on
2 Friday. We would request that the hearing, if it is going
3 to be held on Friday, it be held in the morning.

4 THE COURT: Counsel, I'm on the criminal rotation
12:19:04 5 this month, and we have been very full, so we've got to
6 accommodate my calendar as well. We can do it Friday at
7 2:00. All right?

8 MS. GOEMAAT: Yes, Your Honor.

9 THE COURT: Thank you.

12:19:17 10 Anything further? And, Mr. Kingston and
11 Mr. Kingston, in the interim, you will both be held in
12 custody. Ms. Isaacson, we set yours for next Wednesday.

13 MS. ISAACSON: What time would you like us here,
14 Judge?

12:19:38 15 THE CLERK: 10:30.

16 THE COURT: Now, I've got some information
17 that -- about medications and about specialized diet.

18 MR. WILLIAMS: Your Honor, as to Isaiah Kingston,
19 and I'm assuming that's what you're speaking to.

12:19:58 20 THE COURT: Yes.

21 MR. WILLIAMS: I don't know if there is anything
22 applicable to Mr. Jacob Kingston. We had submitted a
23 proof from American Wellness, and we have Clinic E Medical
24 Practice that serves the needs of Isaiah Kingston, and
12:20:19 25 specifically this document was with regard to his health

1 issues with crohn's and colitis, and he is on a strict
2 functional medical plan of care, including a number of
3 specified holistic medicines. Those -- do you have that
4 before you?

12:20:47 5 THE COURT: I do.

6 MR. WILLIAMS: Okay, great, because we sent it to
7 the marshall's office. We sent it to the jail. He is
8 currently housed in Weber County jail. I have no idea
9 whether the issues we're about to talk about would be
12:21:05 10 different in any jail. I think, as you know, we're
11 constantly trying to maneuver the two different
12 proclivities in this area, you know. At any rate, these
13 are serious issues that he has. I also provided documents
14 from the University of Utah.

12:21:20 15 THE COURT: They are from 2009.

16 MR. WILLIAMS: They are, but that makes them more
17 relevant because Mr. Kingston has not been able to
18 maintain a treatment regimen with regard to the cancer
19 that was diagnosed then, and it is therefore something he
12:21:37 20 suffers from. And I don't think it's necessary unless
21 Your Honor wants me to to get into the specifics of why he
22 has been unable to maintain a regimen that might be
23 recommended by the University of Utah with regard to that.
24 But they document that he has that diagnosis, and that's
12:21:56 25 why I bring it up.

1 THE COURT: All right.

2 MR. WILLIAMS: It didn't go away, we proffer to
3 Your Honor. He suffers from the cancer diagnosis as well.
4 I want to update the Court that our efforts regarding the
12:22:09 5 strict functional medical plan of care and the various
6 medications that are referenced by Carol Stole in the
7 document that we are referring to, with regard to those,
8 we received a message today from the Weber County jail and
9 the marshall's office, that they will not be able to or
12:22:36 10 willing to accommodate those medications being
11 administered to Isaiah Kingston.

12 Also, I don't know, as I stand here, what the
13 difference between a soft diet and hard diet is, but I
14 think I know enough about the difference that it would
12:22:59 15 matter to the concerns of Isaiah Kingston. His crohn's
16 and severe ulcerative colitis condition would be impacted
17 by foods that contain certain sugars and certain
18 carbohydrates and other things, and I don't have any
19 confidence that the difference between those two plans
12:23:23 20 that they maintain are available in terms of diet
21 vis-a-vis what he will suffer.

22 He has been presently suffering an increase in
23 his condition -- or decrease in his condition. He is
24 suffering from the colitis and his ability to get
12:23:42 25 sufficient nutrition. He has already lost significant

1 weight since his incarceration on Friday and so I don't
2 know whether Your Honor is amenable to us in a separate
3 proceeding and in a separate subject beginning to address
4 whether this Court is willing to hear arguments about --
12:24:01 5 and this I think would be ex parte, but address these
6 issues through potential orders to the jail, but that's
7 what we're going to ask.

8 THE COURT: I'll take that under advisement and
9 let you know.

12:24:16 10 MR. WILLIAMS: Is it -- may I approach this Court
11 ex parte on that subject?

12 THE COURT: You may.

13 MR. WILLIAMS: Additionally, I do want to make
14 the record -- I think I have in the other context, but now
12:24:31 15 in the context of his continued detention, that his wife,
16 who is pregnant, is due to give birth to their child at
17 any time, really.

18 THE COURT: Thank you. Anything further?

19 MS. GOEMAAT: Nothing from the United States,
12:24:46 20 Your Honor.

21 THE COURT: All right.

22 Ms. Isaacson?

23 MS. ISAACSON: No, Your Honor, thank you.

24 THE COURT: Then we'll be in recess. Thank you.

25 (Whereupon the proceedings were concluded.)

1
2 REPORTER'S CERTIFICATE

3 STATE OF UTAH)
4) ss.
5 COUNTY OF SALT LAKE)
6

7 I, REBECCA JANKE, do hereby certify that I am a
8 Certified Court Reporter for the State of Utah;

9 That as such Reporter I attended the hearing of
10 the foregoing matter on August 29, 2018, and thereat
11 reported in Stenotype all of the testimony and proceedings
12 had, and caused said notes to be transcribed into
13 typewriting, and the foregoing pages numbered 1 through 32
14 constitute a full, true and correct record of the
15 proceedings transcribed.

16 That I am not of kin to any of the parties and
17 have no interest in the outcome of the matter;

18 And hereby set my hand and seal this 7th day of
19 September, 2018.
20
21
22
23

24 _____
25 REBECCA JANKE, CSR, RPR, RMR